

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Real Estate Salesperson
License of George R. Comb

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATIONS**

This matter came on for hearing before Administrative Law Judge (ALJ) Kathleen D. Sheehy on May 21, 2012, at the Office of Administrative Hearings in St. Paul. The OAH record closed at the conclusion of the hearing that day.

Christopher M. Kaisershot, Assistant Attorney General, appeared for the Department of Commerce (Department).

Mark D. Luther, Attorney at Law, Mark D. Luther Law Office, appeared for George Comb (Respondent).

STATEMENT OF ISSUES

Should the Commissioner take disciplinary action against the Respondent because he:

1. Engaged in fraudulent, deceptive, or dishonest practices, and otherwise engaged in acts that demonstrate he is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the license granted by the Commissioner, as provided in Minn. Stat. §§ 45.027, subd. 7(a)(4), and 82.82, subd. 1(b) (2010)?¹

2. Failed to notify the Commissioner that he was charged with and convicted of a felony, as required by Minn. Stat. §§ 45.027, subd. 7(a)(2), and 82.65, subds. 1 and 5?

3. Failed to notify the Commissioner of a change in his street address within ten days, as required by Minn. Stat. §§ 45.0112 and 45.027, subd. 7(a)(2)?

Based on the proceedings herein, the Administrative Law Judge makes the following:

¹ Unless otherwise noted, all references to Minnesota Statutes are to the 2010 edition.

FINDINGS OF FACT

1. Respondent George Comb has been a licensed real estate salesperson for approximately 29 years. His license is held by ReMax Results, a real estate broker.²

2. Before December 2008, the Respondent was a youth football coach, youth baseball coach, scout leader, and active member of his church.³

3. In December of 2008, the Respondent was working as the operations manager at Four Seasons of Minnesota, LLC, a manufacturer of modular sunrooms headquartered in New York with a location in Golden Valley, Minnesota. As operations manager, the Respondent was responsible for hiring subcontractors to install these products. The Respondent had taken this job because real estate sales were down, and he needed another source of income. His home had been lost in foreclosure, and he was in the process of being divorced.⁴

4. The Respondent had hired a subcontractor named Northern Sunrooms as an installer on several jobs. The owner of Northern Sunrooms is named Joe Lukas.⁵

5. On November 25, 2008, Four Seasons cut a check payable to Northern Sunrooms in the amount of \$5,391 for an installation job. The check was sent to the Respondent to forward to Northern Sunrooms when the job was completed.⁶

6. On December 3, 2008, the Respondent took the check to a Wells Fargo bank located across the street from his place of employment. He opened a business checking account in the name of Northern Sunrooms, and he identified himself as the owner of Northern Sunrooms. He deposited the check into the account, and then he withdrew \$4,500 in cash. Nine days later, he withdrew the remaining \$891 in the account.⁷

7. On or about April 4, 2009, the Respondent moved from 14400 42nd Avenue North to 2795 Ranchview Lane in Plymouth, Minnesota. He advised the Department of this change of address.⁸

8. In June 2009, Four Seasons and Northern Sunrooms filed an affidavit of check fraud with Wells Fargo. The fraud was reported to police officers, who arrested the Respondent in August 2009. The Respondent immediately admitted to police that he had taken the check.⁹

² Testimony of George Comb.

³ Ex. 58.

⁴ Test. of George Comb.

⁵ *Id.*

⁶ *Id.*

⁷ Ex. 3.

⁸ Ex. 4.

⁹ Ex. 3.

9. On September 25, 2009, the Respondent was charged with felony theft by swindle, in violation of Minn. Stat. § 609.52, subd. 2(4), subd. 3(2), and subd. 3(5).¹⁰

10. On the same day, a default civil judgment was entered against the Respondent and his wife in Hennepin County District Court in the amount of \$22,723.03. The judgment represented amounts owed for rent and taxes to Michael Kauffman, the person who had redeemed the Respondent's home from foreclosure.¹¹

11. On March 18, 2010, the Respondent pled guilty to felony theft by swindle, in violation of Minn. Stat. § 609.52, subd. 2(4). He received a stay of imposition of sentence, meaning that his conviction would be reduced to a misdemeanor if the Respondent successfully completed three years of supervised probation, paid restitution in the amount of \$5,391, and served 20 days of Sentence to Service by September 14, 2010.¹² The district court indicated that the Respondent could petition for early discharge from probation if all conditions of his sentence were met.¹³

12. The Respondent did not complete his Sentence to Service within six months, as required by the terms of his probation.

13. At some point after his plea of guilty, the Respondent moved to 15815 24th Avenue North in Plymouth. He currently lives there with his teenage son. The Respondent did not notify the Department of this change of address, nor did he advise the Department of the criminal charge or conviction of theft by swindle.¹⁴

14. In August 2011, the Department received an anonymous telephone call questioning whether it was permissible for the Respondent to be working as a licensed real estate salesperson when he had been convicted of a felony theft.¹⁵ The Department attempted to contact the Respondent by letter sent to the address on Ranchview Lane, which was the most recent address contained in licensing records. The post office returned the letter as the time for forwarding to the new address had expired.¹⁶

15. On August 5, 2011, the Respondent met with an investigator for the Department to discuss these matters.¹⁷

16. On October 12, 2011, the Respondent completed the 20 days of Sentence to Service.¹⁸ He continued to volunteer at Mission Detox Center after completion of his

¹⁰ Ex. 3.

¹¹ Ex. 7; Test. of George Comb.

¹² Ex. 1; Ex. 2; Ex. 13; Ex. 53.

¹³ *Id.*

¹⁴ Ex. 4; Test. of George Comb.

¹⁵ Testimony of Tim Knautz.

¹⁶ Ex. 8.

¹⁷ Exs. 10 & 11.

¹⁸ Ex. 13.

service time, volunteering for approximately 100 hours more through the time of hearing.¹⁹

17. On October 20, 2011, the Commissioner issued the Notice and Order for Prehearing Conference in this matter.

18. On March 1, 2012, the Respondent reached an agreement with Michael Kauffman to vacate the judgment against him; on the same date, the Respondent signed a Confession of Judgment and agreed to pay Kauffman a reduced sum of \$19,700 in payments of \$350 per month, increasing to \$500 per month after one year.²⁰

19. As of the date of hearing, the Respondent had made two payments to Mr. Kauffman pursuant to this agreement.²¹

20. On May 17, 2012, the Respondent completed payment of his restitution obligation to Wells Fargo bank.²²

21. The Respondent's probationary term expires on March 18, 2013.

22. The Respondent has continued to work as a real estate salesperson. As of the date of hearing, the Respondent had not advised his broker, ReMax Results, about the criminal charge or conviction.²³

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction herein pursuant to Minn. Stat. §§ 14.50; 45.027, subd. 7; 58.12, subd. 2; 60K.43, subd. 2; 82.82, subd. 6; and 359.12.

2. The Notice of Hearing was proper, and the Department has fulfilled all procedural requirements.

3. The commissioner may deny, suspend, or revoke the authority or license of a person subject to the duties and responsibilities entrusted to the commissioner, or censure that person, if the commissioner finds that the order is in the public interest and the person has violated any law, rule, or order related to the duties and responsibilities entrusted to the commissioner or has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or

¹⁹ Ex. 59.

²⁰ Ex. 14; Ex. 52.

²¹ Ex. 14.

²² Ex. 50.

²³ Test. of George Comb.

authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner.²⁴

4. The commissioner may deny, suspend or revoke a license or censure a licensee if the commissioner finds that the order is in the public interest and the person has engaged in a fraudulent, deceptive, or dishonest practice.²⁵

5. Licensees must provide to the commissioner a residence telephone number, street address where the licensee actually resides, a street address where the licensee's business is physically located, and a current email address for business use. The individual shall notify the department of any change in street address, email address for business use, or residence telephone number within ten days.²⁶

6. A licensee must provide notice to the commissioner of any change of information contained in the license application on file with the commissioner, including but not limited to personal name, trade name, address, or business location not later than ten days after the change.²⁷

7. The licensee must notify the commissioner in writing if the licensee is charged with, adjudged guilty of, or enters a plea of guilty or nolo contendere to a charge of any felony, or of any gross misdemeanor alleging fraud, misrepresentation, conversion of funds, or a similar violation of any real estate licensing law.²⁸

8. By engaging in theft by swindle, the Respondent engaged in fraudulent, deceptive, and dishonest acts and demonstrated untrustworthiness, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), and 82.82, subd. 1(b).

9. By failing to notify the Commissioner that he was charged with and convicted of a felony, the Respondent violated Minn. Stat. §§ 45.027, subd. 7(a)(2) and 82.65, subds. 1 and 5.

10. By failing to notify the Commissioner of a change in his street address within ten days, the Respondent violated Minn. Stat. §§ 45.0112 and 45.027, subd. 7(a)(2).

11. Discipline of the Respondent's license is in the public interest.

Based on the Conclusions, the Administrative Law Judge makes the following:

²⁴ Minn. Stat. § 45.027, subd. 7(a)(2) & (4).

²⁵ Minn. Stat. § 82.82, subd. 1(b).

²⁶ Minn. Stat. § 45.0112.

²⁷ Minn. Stat. § 82.65, subd. 1.

²⁸ Minn. Stat. § 82.65, subd. 5.

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner take appropriate disciplinary action against the real estate salesperson license of George Comb.

Dated: June 22, 2012

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Michael Rothman, Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Respondent argues, citing Minn. Stat. § 364.03, subd. 1, that his conviction of theft by swindle should not disqualify him from licensure as a real estate salesperson because the check forgery did not occur as part of a real estate transaction. In addition, he argues that he has complied with all terms of probation; he committed the crime in a moment of financial desperation; this is the only conduct subjecting him to discipline in

29 years as a licensed salesperson; and he has demonstrated his commitment to the community by engaging in more volunteer work than required by his probationary sentence. The Department contends that this statute is not applicable by operation of Minn. Stat. § 45.027, subd. 10, which provides that Chapter 364 does not apply to a licensee where the underlying conduct on which the conviction is based would be grounds for denial, censure, suspension, or revocation of the license.

Minn. Stat. § 364.03, subd. 1, provides that “[n]otwithstanding any other provision of law to the contrary,” no person shall be disqualified from a licensed occupation solely or in part because of a criminal conviction, unless the conviction directly relates to the occupation for which the license is sought. In determining if a conviction directly relates to the occupation, the licensing authority shall consider (1) the nature and seriousness of the crime for which the individual was convicted; (2) the relationship of the crime to the purposes of regulating the occupation; and (3) the relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation.

The courts have found fraudulent conduct in particular to be directly related to a licensed occupation even where the conduct did not take place in the course of licensed work. For example, the Court of Appeals affirmed a conclusion that a teacher’s conduct (embezzling from a company of which he was the treasurer) directly related to the teacher’s fitness to teach social studies to high school students.²⁹ The Minnesota Supreme Court similarly concluded that a conviction of attempted theft by trick was directly related to the operation of a licensed massage parlor.³⁰

Assuming that Chapter 364 applies here, the record reflects that while working as a manager entrusted with the payment of his employer’s bills, the Respondent took a check intended for someone else, opened an account in the payee’s name by providing false information to a bank, and then removed the funds from the account. This fraudulent conduct is directly related to the ability, capacity, and fitness to be a licensed real estate salesperson.

The Criminal Rehabilitation Act further provides that a person convicted of a crime that directly relates to the licensed occupation may not be disqualified if there is competent evidence of “sufficient rehabilitation and present fitness to perform the duties” of the licensed occupation.³¹ Sufficient evidence of rehabilitation may be established by showing completion of probation, any other mitigating circumstances, the person’s age at the time of the crime, the length of time elapsed since the crime was committed, and other evidence such as letters of reference.³²

²⁹ *In the Matter of the Proposed Discharge of Donald Lee Shelton*, 408 N.W.2d 594, 598-99 (Minn. App. 1987), rev. denied (Minn. Aug. 12, 1987).

³⁰ *Peterson v. Minneapolis City Council*, 274 N.W.2d 918, 920-21 (Minn. 1979).

³¹ Minn. Stat. § 364.03, subd. 3(a).

³² Minn. Stat. § 364.03, subd. 3(b).

The Respondent was a mature adult in his late 40s when he committed this crime in 2008. He was facing overwhelming financial difficulties. After this matter came to the attention of licensing authorities, he was motivated to complete the terms of his probation and is trying to work out the payment of his other debt. He is still subject to supervision, however, until March 2013. He did not advise either the Department or his broker of the criminal charge or the conviction of theft by swindle. As recent economic circumstances make clear, the real estate market is rife with opportunities for fraud and collusion between builders, salespersons, appraisers, and others; honesty and integrity are legitimate requirements of licensure. Under all the circumstances, the Administrative Law Judge concludes the Respondent has failed to show sufficient evidence of rehabilitation and present fitness to perform the work of a licensed real estate salesperson. Discipline of his license is in the public interest.

K.D.S.